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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,308	07/30/2003	Robert M. Rauker	1001.1512101	9063
28/075 7590 12/23/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
EXAMINER				
BLATT, ERIC D				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
12/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/630,308

**Applicant(s)**

RAUKER ET AL.

**Examiner**

Eric Blatt

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-10,12-15,21,22 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-10,12-14,21,22 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belef et al. (US 7,169,165) in view of Wholey et al. (US 2003/0176886).

Belef discloses a filter delivery catheter (Figures 1B and 3A) comprising an elongated shaft 10 including an aspiration port 16 located along the circumference of the elongated shaft. Although Belef does not directly address aspiration in the embodiments shown in Figures 1B and 3A, Belef does discuss connecting the proximal end of the shaft to a suction source to aspirate embolic material at the distal end of the shaft in other embodiments. (See at least Col. 8, Ln 39-40) Thus, the port 16 is fully capable of being used as an aspiration port. The delivery catheter further includes a blood permeable filtration device 50 having an expanded configuration and a collapsed configuration being sized to fit within the shaft lumen. There is a guidewire 20 slidably disposed within the shaft lumen 11 wherein the guidewire 20 passes through the aspiration port 16.

Belef thus discloses all elements of claim 23 except for additional aspiration ports being disposed distally of the aspiration port 16 and proximally of the distal end of the

elongated shaft 10. Wholey discloses a similar filter delivery catheter (Figure 7) and teaches that a plurality of aspiration ports 114 may be provided just proximal of the distal end of the catheter in order to aspirate embolic debris. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Belef by providing additional aspiration ports just proximal of the distal end of the delivery catheter in order to achieve these benefits as taught by Wholey.

Claims 1, 3, 4, 6-10, 12-14, 21, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belef et al. (US 7,169,165) in view of Wholey et al. (US 2003/0176886) as applied to claim 23 above, and further in view of Tao (US 6,610,005).

As previously discussed, Belef and Wholey teach a system wherein a plurality of aspiration ports are operably coupled to a suction source. Belef teaches that the aspiration ports are in communication with a suction providing means via the elongated shaft as previously discussed. The filtration device 50 is a floating filter 50 and is fixedly attached to a wire. (Figures 1B and 3A) The aspiration ports are located both along the circumference and along the length of the shaft.

Thus, Belef and Wholey teach all elements of claims 1, 3, 4, 6-14, 21, 22 and 26 except for an operable end cap disposed on the elongated shaft distal to the filtration device. Tao discloses a number of end cap embodiments that are fixedly attached to the distal end of a catheter 24 for preventing debris from entering the catheter while it is advanced through a body lumen. (Figures 4-10 and 20-22) It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the

apparatus of Belef by providing an end cap fixedly attached to the end of the shaft 10 in order to achieve these benefits.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belef et al. (US 7,169,165) in view of Wholey et al. (US 2003/0176886) and Tao (US 6,610,005) as applied to claim 1 above, and further in view of Hoy (US 6,705,575).

Regarding claims 27-29, Tao teaches providing an end cap such as that shown in Figure 22 on the distal end of the Belef catheter 10 as discussed above. This end cap comprises a plurality of plates, but it is unclear whether the plates will interleave to any degree during operation. Hoy discloses a device having a related cap-like means 40 comprising a plurality of overlapping plates 44 (Figures 1 and 5A-5C). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the plates of the Tao cap such that they interleave since interleaving plates were well known and it causing the plates to interleave would not have produced unexpected results. The plates form a dome shape as shown in Figure 20 of Tao. The shape depicted in Figure 20 may also be considered to generally comprise a cone shape. Alternatively, it would have been obvious to form the plates such that they form a cone shape since this issue is an obvious matter of design choice and would not materially affect the function of the device.

#### ***Response to Arguments***

Applicant's arguments with respect to claim 1, 3, 4, 6-10, 12-14, 21-23 and 26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. B./  
Examiner, Art Unit 3734

***/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734***